

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2009, Legislative Day No. 19

Bill No. 92-09

Mr. Joseph Bartenfelder, Chairman
By Request of County Executive

By the County Council, November 16, 2009

A BILL
ENTITLED

AN ACT concerning

Tobacco Enforcement - Examination of Identification and Enforcement

FOR the purpose of requiring a person selling tobacco product to check the age of a buyer under certain circumstances; providing for enforcement by Code Enforcement law; defining certain terms; and generally relating to Tobacco Enforcement in the county.

By adding

Sections 13-12-101(f) and (g) and 13-12-103.1
Title 12. Distribution of Tobacco Products to Minors
Article 13. Public Health, Safety and the Environment
Baltimore County Code, 2003

By repealing and reenacting, with amendments

Section 13-12-105
Title 12. Distribution of Tobacco Products to Minors
Article 13. Public Health, Safety and the Environment
Baltimore County Code, 2003

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL FOR BALTIMORE
2 COUNTY, MARYLAND, that Sections 13-12-101(f) and (g) and 13-12-103.1 are hereby added
3 to Title 12. Distribution of Tobacco Products to Minors, of Article 13. Public Health, Safety and
4 the Environment, of the Baltimore County Code, 2003, as amended, to read as follows:
5 § 13-12-101.

6 (F) “HEALTH OFFICER” INCLUDES THE HEALTH OFFICER’S DESIGNEE.

7 (G) “TOBACCO PARAPHERNALIA” HAS THE MEANING STATED IN § 10-
8 101 OF THE CRIMINAL LAW ARTICLE OF THE ANNOTATED CODE OF MARYLAND.
9 § 13-12-103.1

10 (A) EACH OWNER OR OTHER DISTRIBUTOR SHALL VERIFY BY MEANS OF
11 PHOTOGRAPHIC IDENTIFICATION CONTAINING THE BEARER’S DATE OF BIRTH
12 THAT NO PERSON PURCHASING A TOBACCO PRODUCT OR TOBACCO
13 PARAPHERNALIA IS A MINOR.

14 (B) NO SUCH VERIFICATION IS REQUIRED FOR ANY PERSON OVER THE
15 AGE OF 26.

16 (C) PROOF THAT THE OWNER OR OTHER DISTRIBUTOR DEMANDED, WAS
17 SHOWN, AND REASONABLY RELIED UPON PROOF OF AGE SHALL BE A DEFENSE
18 TO ANY ACTION BROUGHT UNDER THIS SECTION.

19 (D) AN OWNER OR OTHER DISTRIBUTOR IS NOT REQUIRED TO VERIFY
20 THE AGE OF THE INDIVIDUAL PURCHASING THE TOBACCO PRODUCT IF THE
21 OWNER OR OTHER DISTRIBUTOR HAS PERSONAL KNOWLEDGE, WHETHER FROM
22 PERSONAL ACQUAINTANCE OR FROM A PREVIOUS DEMAND FOR VERIFICATION

1 OF AGE, THAT THE PURCHASER IS NOT A MINOR.

2 SECTION 2. AND BE IT FURTHER ENACTED, that Section 13-12-105, of Title 12.
3 Distribution of Tobacco Products to Minors, of Article 13. Public Health, Safety and the
4 Environment, of the Baltimore County Code, 2003, as amended, is hereby repealed and
5 reenacted, with amendments, to read as follows:

6 § 13-12-105.

7 (a)(1) An owner who violates any provision of this [article] TITLE is subject to a
8 civil penalty of \$300 for the first violation and \$500 for ANY subsequent violations.

9 (2) AN OWNER IS LIABLE FOR VIOLATION OF THIS TITLE
10 COMMITTED BY AN EMPLOYEE OR AGENT OF THE OWNER.

11 (b) Any other person who violates any provision of this article is subject to a
12 civil penalty of \$50 for the first violation and \$100 for ANY subsequent violations.

13 (c) For purposes of this section, each separate incident at a different time and
14 occasion is a violation.

15 (d) [(1)] The Baltimore County Department of Health [shall enforce the
16 provisions of this title.

17 (2) The Department] may adopt reasonable regulations, in accordance with
18 the provisions of Article 3, Title 7 OF THE CODE, to carry out the purposes of this title.

19 (E)(1) AS PROVIDED IN THIS SUBSECTION AND IN ADDITION TO ANY
20 OTHER REMEDY AUTHORIZED BY LAW, THE HEALTH OFFICER MAY ENFORCE
21 THE PROVISIONS OF THIS TITLE IN ACCORDANCE WITH ARTICLE 3, TITLE 6 OF
22 THE CODE.

1 (2)(I) IF AN OWNER OR AN EMPLOYEE OR AGENT OF THE
2 OWNER VIOLATES A PROVISION OF THIS TITLE, THE HEALTH OFFICER MAY ISSUE
3 A CORRECTION NOTICE TO THE OWNER.

4 (II) IF THE CORRECTION NOTICE IS FOR A VIOLATION OF
5 THE PRODUCT PLACEMENT PROVISIONS OF § 13-12-104 OF THIS TITLE, THE
6 CORRECTION NOTICE SHALL INSTRUCT THE OWNER TO COMPLY WITH THOSE
7 PROVISIONS WITHIN AN AMOUNT OF TIME REQUIRED BY THE HEALTH OFFICER.

8 (III) IF THE CORRECTION NOTICE IS FOR A VIOLATION OF
9 THE DISTRIBUTION TO MINORS PROVISIONS OF § 13-12-103 OF THIS TITLE OR THE
10 IDENTIFICATION CHECK PROVISIONS OF § 13-12-103.1 OF THIS TITLE, THE
11 CORRECTION NOTICE SHALL INSTRUCT THE OWNER TO:

12 1. CEASE AND DESIST FROM SUCH VIOLATIONS;
13 AND

14 2. ENSURE THAT THE OWNER'S EMPLOYEES AND
15 AGENTS CEASE AND DESIST FROM SUCH VIOLATIONS.

16 (IV) THE HEALTH OFFICER SHALL POST THE CORRECTION
17 NOTICE ON THE PROPERTY, SEND THE CORRECTION NOTICE BY FIRST CLASS
18 MAIL, OR HAND DELIVER THE CORRECTION NOTICE TO THE OWNER.

19 (V) AN OWNER MAY NOT APPEAL THE ISSUANCE OF A
20 CORRECTION NOTICE.

21 (3)(I) IF THE OWNER FAILS TO CORRECT THE PRODUCT PLACEMENT
22 VIOLATION WITHIN THE TIME REQUIRED BY THE CORRECTION NOTICE OR IF

1 THERE IS A SUBSEQUENT VIOLATION OF THE DISTRIBUTION TO MINORS OR
2 IDENTIFICATION CHECK PROVISIONS AT THE LOCATION FOR WHICH A
3 CORRECTION NOTICE WAS ISSUED, THE HEALTH OFFICER MAY ISSUE A
4 CITATION TO THE OWNER.

5 (II) THE CITATION SHALL:

6 1. BE IN WRITING AND DESCRIBE WITH PARTICULARITY
7 THE NATURE OF THE VIOLATION, INCLUDING A REFERENCE TO THE COUNTY
8 CODE PROVISION THE OWNER OR THE OWNER'S EMPLOYEE OR AGENT HAS
9 ALLEGEDLY VIOLATED;

10 2. INCLUDE ANY CIVIL PENALTY PROPOSED TO BE
11 ASSESSED; AND

12 3. ADVISE THE OWNER THAT THE OWNER MAY CONTEST
13 THE CITATION OR PROPOSED CIVIL PENALTY BY FILING WITH THE HEALTH
14 OFFICER, WITHIN 15 DAYS AFTER RECEIPT OF THE CITATION, A WRITTEN
15 REQUEST FOR A CODE ENFORCEMENT HEARING.

16 (III) THE HEALTH OFFICER SHALL SERVE THE CITATION ON
17 THE OWNER BY POSTING THE CITATION ON THE PROPERTY, SENDING THE
18 CITATION BY FIRST CLASS MAIL, OR HAND DELIVERING THE CITATION TO THE
19 OWNER ON A FORM PRESCRIBED BY THE HEALTH OFFICER.

20 (IV) A CITATION MAY REQUIRE THE OWNER TO COMPLY
21 WITH THE CORRECTION NOTICE.

22 (V) IF THE OWNER DOES NOT REQUEST A CODE

1 ENFORCEMENT HEARING WITHIN THE 15 DAYS REQUIRED UNDER THIS
2 SUBSECTION, THE CITATION AND ANY CIVIL PENALTY ARE DEEMED A
3 NON-APPEALABLE FINAL ORDER OF THE HEALTH OFFICER.

4 (4) THE HEALTH OFFICER IS NOT REQUIRED TO ISSUE A
5 CORRECTION NOTICE TO THE OWNER BEFORE ISSUING A CITATION IF THE
6 HEALTH OFFICER HAS ALREADY ISSUED A PREVIOUS CITATION FOR THE SAME
7 VIOLATION IN THE SAME LOCATION.

8 (5)(I) IF ANY PERSON OTHER THAN THE OWNER COMMITS A
9 VIOLATION OF THIS TITLE, THE HEALTH OFFICER MAY ISSUE A CORRECTION
10 NOTICE AND CITATION AS PROVIDED IN THIS SUBSECTION.

11 (II) THE HEALTH OFFICER IS NOT REQUIRED TO ISSUE A
12 CORRECTION NOTICE TO THE PERSON BEFORE ISSUING A CITATION IF THE
13 HEALTH OFFICER HAS ALREADY ISSUED A PREVIOUS CITATION TO THE PERSON
14 FOR THE SAME VIOLATION.

15 (6)(I) EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE CODE
16 ENFORCEMENT PROCEEDINGS SHALL CONTINUE AS PROVIDED IN §§ 3-6-206 AND
17 3-6-207 OF THE CODE AND ARTICLE 3, TITLE 6, SUBTITLES 3 AND 4 OF THE CODE.

18 (II) FOR PURPOSES OF THIS SUBSECTION:

19 1. ALL REFERENCES TO THE “CODE OFFICIAL” SHALL BE
20 DEEMED TO REFER TO THE HEALTH OFFICER;

21 2. ALL REFERENCES TO THE “VIOLATOR” SHALL BE
22 DEEMED TO REFER TO THE OWNER OR PERSON WHO HAS RECEIVED A

1 CORRECTION NOTICE OR CITATION UNDER THIS TITLE; AND

2 3. ALL REFERENCES TO THE "HEARING OFFICER" SHALL
3 BE DEEMED TO REFER TO THE INDIVIDUAL DESIGNATED BY THE HEALTH
4 OFFICER TO CONDUCT CODE ENFORCEMENT HEARINGS UNDER THIS TITLE.

5 (III) SECTION 3-6-206(C), (D), AND (E) OF THE CODE DOES NOT
6 APPLY TO A CITATION ISSUED UNDER THIS TITLE.

7 SECTION 3. AND BE IT FURTHER ENACTED, that this Act shall take effect 45 days
8 after its enactment.